

STATE OF MICHIGAN  
COURT OF APPEALS

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ANJENETTE BARNES,

Plaintiff-Appellant,

v

PAM STANLEY and KELLY ELDRED,

Defendants-Appellees.

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UNPUBLISHED

March 18, 2003

No. 237291

Kent County Circuit Court

LC No. 00-004186-NO

Before: Griffin, P.J., and Neff and Gage, JJ.

MEMORANDUM.

Plaintiff appeals as of right from the order granting defendants' motion for summary disposition under MCR 2.116(C)(10). We reverse and remand for further proceedings. This appeal is being decided without oral argument pursuant to MCR 7.214(E).

Plaintiff was injured when she fell down a seven-step stairwell after catching her foot in a bent noser strip. There was no handrail and the stairwell was therefore in violation of the Grand Rapids housing code. The stairwell led to plaintiff's basement in her apartment.

Finding that the missing handrail and bent noser strip were open and obvious conditions, the trial court held that the open and obvious doctrine was a complete defense to plaintiff's claim. Relying on *Millikin v Walton Manor*, 234 Mich App 490; 595 NW2d 152 (1999), the court concluded that it did not matter whether plaintiff's claim was based on a premises liability theory or on statutes, specifically MCL 554.139 and MCL 125.536. However, in *Woodbury v Buckner*, 2002 Mich LEXIS 2306 (Mich Dec 26, 2002), the Supreme Court held that "[t]he open and obvious doctrine cannot be used to avoid a specific statutory duty." Accordingly, the trial court erred. Since the open and obvious doctrine is not a defense, we need not address plaintiff's argument that the danger posed was unreasonable.

Nonetheless, defendants argue that summary disposition should have been granted on alternative grounds. We agree that summary disposition should have been granted to defendant Kelly Eldred. Plaintiff failed to refute her testimony that she was not an owner. The answer erroneously admitting that she was an owner was amended to correct the mistake. Moreover, the lease of record does not indicate that she was an owner; it lists her as "property owner or agent."

Defendants also argue that the missing handrail was not a proximate cause since the plaintiff's hands were occupied at the time of her fall. Plaintiff claims she would have dropped the items and grabbed the handrail. This is an issue of fact.

Finally, defendants argue on appeal that plaintiff has no cause of action under MCL 125.536 because she did not give notice of the dangerous condition to the landlord. The trial court did not rule on this issue and defendants did not raise it in their motion for summary disposition. Moreover, the record is not sufficiently developed to address this issue. This issue should be addressed by the trial court.

Reversed and remanded. We do not retain jurisdiction.

/s/ Richard Allen Griffin

/s/ Janet T. Neff

/s/ Hilda R. Gage